United Nations Convention on the Law of the Sea SPLOS/75

Meeting of States Parties

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Report of the External Auditors for the financial year 2000, with financial statements of the International Tribunal for the Law of the Sea as of 31 December 2000

Introductory note

1. The ninth Meeting of States Parties, as recorded in the report of the ninth Meeting (SPLOS/48, para. 28), requested the Registrar, pending the entry into force of the Financial Regulations of the Tribunal, to present to the Meeting of States Parties every year a preliminary performance report on the use of the budget appropriations for the preceding year and a final performance report on the use of the budget appropriations for the year prior to the preceding year.

2. Consistent with that decision, the report of the External Auditor for 2000, the year prior to the preceding financial year, is hereby presented.

3. The preliminary performance report of the preceding year (2001) is contained in annex I to the draft budget proposals of the Tribunal for 2003 (SPLOS/WP.16).

02-25419 (E) 270302

ARTHUR ANDERSEN

The International Tribunal for the Law of the Sea

Hamburg

Report on the examination of the financial statements as of 31 December 2000

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To the States Parties to the United Nations Convention on the Law of the Sea:

A. SCOPE OF THE EXAMINATION

We have audited the accompanying financial statements of

THE INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA

HAMBURG

including the statement of assets, liabilities, working capital fund and excess of income over expenditures as of December 31, 2000, the statement of income and expenditures for the period then ended and the Notes to the financial statements. Within the audit scope we have additionally audited certain aspects of operating procedures as directed by the President of the International Tribunal for the Law of the Sea as set out in his letter of January 7, 2000, which was confirmed by the Registrar's letter dated April 20, 2001, for the year 2000. The financial statements are the responsibility of the Registry of the International Tribunal for the Law of the Sea. Our responsibility is to express an opinion on these financial statements and the following aspects of the operational procedures of the International Tribunal for the Law of the Sea:

(a) whether expenditures incurred have been appropriately authorized by the party designated for that purpose in the Rules of the Tribunal and the Financial Regulations of the United Nations;
(b) whether staff and persons being paid by the Tribunal have been recruited or engaged in the manner provided for in the Rules of the Tribunal or the Financial Regulations of the United Nations;
(c) whether goods and services have been procured in accordance with the procedures provided for in the Financial Regulations of the United Nations; and
(d) whether goods and services which have been procured are necessary or not excessive, having regard to circumstances and the functions of the Tribunal.

The financial statements as of December 31, 2000, and our audit thereon cover a period from January 1, 2000, to December 31, 2000.

The International Tribunal for the Law of the Sea applied generally accepted accounting principles and the Financial Regulations and Rules of the United Nations which are applied mutatis mutandis.

We conducted our audit in accordance with generally accepted auditing standards. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audit provides a reasonable basis for our opinion.

Regarding audit procedures and the results of the additional audit scope we refer to Exhibit 6.

Team members from our London and Hamburg offices conducted the audit.

Reference is made to the General Terms for "Wirtschaftsprüfer und Wirtschaftsprüfungsgesellschaften" dated July 1, 2000 and our Special Conditions (Exhibit 7), in regard to the assignment and our responsibilities, including those to third parties.

B. BUDGET

The Meeting of States Parties, at its Ninth Meeting, by its decision of May 28, 1999, approved and appropriated the amount of USD 7,657,019 for the International Tribunal for the Law of the Sea for the period from January 1, 2000, to December 31, 2000, as set out in document SPLOS/L.14. In addition, the Meeting of States Parties approved the establishment of a Working Capital Fund. On an exceptional basis, savings from appropriations in the budget, up to a maximum of USD 200,000, will be credited to the Working Capital Fund. Furthermore a provision of USD 50,000 for the Working Capital Fund was approved by the Meeting of States Parties. An additional Contingency Fund was approved up to a maximum of USD 679,364, which shall be only used in the event of cases being submitted to the International Tribunal for the Law of the Sea.

The statement of income and expenditure (before provision for the Working Capital Fund) shows an excess of income over expenditure of USD 1,773,975.37. Thereof USD 250,000 is credited to the Working Capital Fund.

Due to the unexpected death of one judge in October 2000, there was a slight overexpenditure in the budget line: Judges Pension Scheme. This overexpenditure is offset by the provision made for his annual allowances under the budget line: Remuneration of Judges – Annual Allowances.

A shorter meeting time for the Judges of the International Tribual for the Law of the Sea in Hamburg than provided resulted in savings in the budget lines: Contingency Provision (which is a provision made for the Tribunal meeting to deal with cases which it might receive during the year), Travel of judges to sessions, General Temporary Assistance and Communications. Recruitment delays resulted in savings in the budget lines: Established Posts and Common Staff Costs. Delays in moving to the permanent premises of the International Tribunal for the Law of the Sea in Nienstedten, Hamburg, resulted in savings in the budget lines: Supplies and Materials, Contractual Security, Maintenance of Premises, Purchase of equipment and Rental and Maintenance of Equipment.

Reference is also made to the Notes to the Financial Statements.

C. OPINION

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of The International Tribunal for the Law of the Sea, Hamburg, as of December 31, 2000, in conformity with generally accepted accounting principles and with the Financial Regulations of the United Nations which were applied mutatis mutandis. The operational procedures of the International Tribunal for the Law of the Sea as detailed in Exhibit 6 were in accordance with the Rules and Staff Rules of the International Tribunal for the Law of the Sea and the Financial Regulations and Staff Rules of the United Nations applied mutatis mutandis.

ARTHUR ANDERSEN, ESCHBORN/FRANKFURT/M. * WIRTSCHAFTSPRÜFUNGSGESELLSCHAFT - STEUERBERATUNGSGESELLSCHAFT * WIRTSCHAFTS-PRÜFUNGS-GESELLSCHAFT SIEGEL ZWEIGNIEDERLASSUNG HAMBURG

Arthur Andersen
Wirtschaftsprüfungsgesellschaft
Steuerberatungsgesellschaft mbH

Jons
Wirtschaftsprüfer

Möbus
Wirtschaftsprüfer

Hamburg, May 2, 2001

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Our prior written approval is required for publication or distribution of the financial statements in a version different from the one reported upon by us if reference is made in such publication or distribution to our opinion or to our examination.

Exhibit 1

INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA

STATEMENT OF INCOME AND EXPENDITURES

FOR THE PERIOD FROM 1 JANUARY UNTIL 31 DECEMBER 2000

	2000 US$	1999 US$
Income		
Assessed contributions	7,657,019.00	6,983,817.00
Donation Korea Foundation	0.00	100,000.00
Miscellaneous income		
Interest income	72,927.88	22,526.30
Release of prior periods obligations	139,631.50	65,578.77
Currency exchange gains	29,156.99	0.00
Total income	7,898,735.37	7,171,922.07
Expenditures		
Budget lines - expenditures and obligations (Exhibit 5)	6,124,760.00	6,563,505.00
Korea Foundation Library - expenditures and obligations	0.00	99,714.08
Currency exchange losses	0.00	37,787.76
Total expenditures	6,124,760.00	6,701,006.84
Excess of income over expenditures	1,773,975.37	470,915.23
Provision for working capital fund	250,000.00	200,000.00
Excess of income over expenditures after provision for the Working Capital Fund	1,523,975.37	270,915.23

Exhibit 2

INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA

STATEMENT OF ASSETS, LIABILITIES, WORKING CAPITAL FUND AND EXCESS OF INCOME OVER EXPENDITURES AS AT 31 DECEMBER 2000

	2000 US$	1999 US$
Assets		
Cash and term deposits	5,158,974.60	2,536,997.24
Accounts receivable		
Contributions receivable from States Parties	1,170,891.00	1,466,309.00
Tax reimbursements due	78,605.73	62,811.20
Other accounts receivable	6,145.09	6,642.17
Total assets	6,414,616.42	4,072,759.61
Liabilities		
Contributions received in advance	1,158,344.00	1,260,413.00
Unliquidated obligations - current period	800,179.73	438,696.83
Unliquidated obligations - prior period	25,000.00	31,031.59
Unliquidated obligations - Korea Foundation Library	9,777.95	86,896.84
United Nations Joint Staff Pension Fund (UNJSPF)	8,612.75	13,572.73
Assessment special account	1,329,482.46	932,904.46
Total liabilities	3,331,396.89	2,763,515.45
Working Capital Fund	450,000.00	200,000.00
Excess of income over expenditures for the financial period 1998	838,328.93	838,328.93
Excess of income over expenditures for the financial period 1999 (after provision for the working capital fund)	270,915.23	270,915.23
Excess of income over expenditures for the financial period 2000 (after provision for the working capital fund)	1,523,975.37	0.00
Total working capital fund and excess of income over expenditures	3,083,219.53	1,309,244.16
Total liabilities, working capital fund and excess of income over expenditures	6,414,616.42	4,072,759.61

Exhibit 3

NOTES TO THE FINANCIAL STATEMENTS FOR THE PERIOD 1 JANUARY UNTIL 31 DECEMBER 2000

Note 1: Statement of the objectives and activities of the Tribunal

1. The International Tribunal for the Law of the Sea (ITLOS) is an independent international judicial body established by the United Nations Convention on the Law of the Sea for the settlement of disputes relating to the uses and resources of the sea. Such disputes may be between the States Parties to the Convention, international organisations and consortia of corporations or individual persons or corporations. The primary objective of the Tribunal is to provide an established global court which is available for disputes that states any submit to it or that the other entities referred to above may submit as appropriate.

Note 2: Summary of significant accounting policies

2. The Tribunal's accounts are maintained in accordance with the Financial Regulations of the United Nations, with such modifications as required by the nature of the work of the Tribunal. The Meeting of States Parties to the United Nations Convention on the Law of the Sea decided that the Tribunal would use the Financial Regulations of the United Nations with such modifications as may be needed. The ITLOS Financial Regulations are under review by the Meeting of States Parties scheduled for May 2001. The UN Financial Regulations and Rules will be in effect until then.

3. The form of presentation of the accounts, comprising two statements and one Annex for the Financial Period ended 31 December 2000, are in line with the formats proposed for use by the agencies of the United Nations system.

Accounting Period

4. The current accounting period being reported on is from 1 January to 31 December 2000.

Currency of accounts

5. The accounting unit is the United States Dollar. The United Nations operational rates of exchange form the basis for establishing the equivalent in United States Dollars of other currencies.

Translation of currencies

6. Differences between the valuation of the currencies when entered into the accounts and when actual transactions are completed are calculated and detailed in these notes as gains and losses on exchange transactions.

7. Periodically, assets and liabilities in currencies other than United States Dollars are revalued for accounting purposes at the prevailing United Nations operational rates of exchange. Any variance due to fluctuation of those rates is accounted for as income or loss in the statement of income and expenditure.

Income

8. Income consists of assessed contributions from the States Parties. All other income received by the Tribunal is classified as miscellaneous income. See Note 4.

Expenditure

9. All expenditure of the Tribunal is recorded against allocated lines of budgetary appropriation.

10. Expenditures of ITLOS are accounted for on an accrual basis, except for that relating to staff entitlements, which is accounted for on the basis of cash disbursements. No provision is made for staff entitlements for Repatriation, accumulated annual leave and compensatory time liabilities. Reference is made to Note 3: Contingent liability.

Assets

11. All funds received are deposited into Tribunal's bank accounts, including those under special account arrangements, and reflected as cash holdings. Non-expendable equipment (especially computer hardware and software) is not included in the assets but is charged against the current appropriations when acquired.

Liabilities

12. The liabilities of the Tribunal mainly include contributions received in advance, special accounts and un-liquidated obligations.

13. The statement of assets and liabilities include a special account (United Nations Joint Staff Pension Funds – UNJSPF) maintained for withholdings from staff and contributions of the Tribunal for payment into the United Nations Joint Staff Pension Fund (UNJSPF). These withholdings are for staff and the Organization's share for the period prior to the General Service Staffs' eligibility to participate in the UNJSPF.

14. A special account (Assessment special account) has also been maintained for Staff Assessment withholdings from the gross remuneration of staff in accordance with the applicable scale of the United Nations.

Reserves

15. Reserves include provision made and savings transferred to the Working Capital Fund as authorised by the Ninth Meeting of States Parties (SPLOS/14 paragraph 3).

1999 Savings	US$ 200,000
2000 Provision	US$ 50,000
2000 Savings	US$ 200,000

Note 3: Contingent liability

16. The net contingent liability for staff benefits as at Decemeber 31, 2000 is established at USD 218,707 consisting of the following:

Accumulated leave	US$ 118,254
Compensatory time	US$ 2,665
Repatriation grant	US$ 97,788
	US$ 218,707

17. There is no provision in the accounts for contingent liability. The expenditures will be charged against the budget appropriations of the periods when actual payments are made. In accordance with ST/IC/1992/18 the contingent liability reflected above is based on net remuneration and does not include Staff Assessment. This liability might be subject to German Social Security payments (Medical insurance, pension and old age care) for German staff.

Note 4: Income

18. The Tribunal's income in the Financial Period 2000 totalled USD 7,898,735. Income resulted from contributions of 135 States Parties at the end of 2000 of USD 7,657,019. In addition, income included savings on cancellation for prior period obligations of USD 139,632 and net interest income of USD 72,928. Of the total income listed above, at the end of that Financial Period an amount of USD 1,170,891 was outstanding from States Parties. Gains due to fluctuation in exchange rates amount to USD 29,157.

Note 5: Expenditures

19. The Tribunal's expenditures for the Financial Period 2000 totalled USD 6,124,760 (before provision for the working capital fund).

Note 6: Assets

20. Contributions receivable for the current Financial Period totalled USD 1,170,891 as at December 31, 2000.

21. As at December 31, 2000, cash totalled USD 5,158,975. Included in this amount is a special account for Pension withholdings and employer's contribution of USD 8,613 and a special account for Staff assessment withholdings of USD 1,329,483. These are not expendable resources of the Tribunal.

22. The aggregate of accounts receivable, advances and deposits as at December 31, 2000 totalled USD 6,414,616.

Note 7: German Social Security Payments

23. German nationals and German residents among the staff are mandatory required to contribute to the National Social Security System, which has four components. These are Pension, Medical Insurance, Unemployment Insurance and Old Age Care. In addition, the staff members have to contribute to the United Nations Joint Staff Pension Fund to which the Tribunal is a participant. Due to the fact that the host country agreement (Headquarters Agreement) is still not finalized, the Tribunal reimburses the employer's share (Fifty Percent) of the contributions made to the German social security system by the staff, which is in addition to the staff share of the contribution. No reimbursement was made for unemployment insurance, it is however, envisaged that from this amount the pension contribution shall be reimbursed to the staff members by the German authorities, once the agreement is finalized. The staff will be thus obliged to reimburse the Tribunal for the same. Since there is no legal basis yet to capitalize these accounts receivables, it should be noted that total payment in the amount of USD 51,126 were made during the Financial Period January 1, to December 31, 2000 out of which an estimated amount of USD 28,520 is for the pension contributions and is likely to be covered. In addition a sum of USD 125,727 is likely to be covered for the Financial Period 1996/97, 1998 and 1999.

Note 8:

24. The audited Financial Statements of 1998 and 1999 showed a net gain of income over expenditure in the amount of USD 1,109,244. Under the United Nations Financial Regulations, which the Tribunal applies mutatis mutandis, this amount should be surrendered by adjusting the States Parties Assessment of Contributions for the following Financial Periods. In view of the outstanding contributions and the need to build up the Working Capital Fund to an operational level and as noted in the 1999 Financial Statements it is intended that the surrender will be delayed until 2001.

Exhibit 4

FINANCIAL REPORT FOR THE FINANCIAL PERIOD 1 JANUARY - 31 DECEMBER 2000

Introduction

1. The Registrar of the Tribunal for the Law of the Sea submits herewith the Financial Report for the Financial Period ended 31 December 2000. It should also be noted that this is the fourth Financial Period and the fourth Financial Report of the International Tribunal for the Law of the Sea (ITLOS).

2. The Financial Report includes the Statement of Income and Expenditures (Statement 1) and the Statement of Assets and Liabilities (Statement 2), the Notes to the Financial Statements and Annex I, for the Financial period ended 31 December 2000. Of these, Statements I and II are presented in line with the formats agreed for the harmonization of the accounts of agencies and organisations in the United Nations common system, and to facilitate review by States Parties to the Convention on the Law of the sea. The Financial report provides the Financial results of ITLOS activities in 2000. Highlights are summarized in the following paragraphs.

Income

3. ITLOS income in the Financial Period 2000 totalled assessed contributions of USD 7,657,019. Income resulted from contributions of 135 States Parties at the end of 2000. Of the total income listed above an amount of USD 1,170,891 was outstanding from States Parties. In addition to the above there was interest income in the amount of USD 72,928.

Expenditure

4. ITLOS expenditure (before provision for the working capital fund) for the Financial Period 2000 was USD 6,124,760. There were certain savings due to recruitment delay factors, delay in moving to the new premises, not complete utilization of the Contingency provision and optimizing resources.

Special accounts

5. A special account was maintained for the Pension Fund withholdings of the Staff members and of the Organization's share of pension contributions for the period prior to the General Services Staff's eligibility to participate in the United Nations Joint Staff Pension Fund. In addition, a special account was maintained for staff assessment withholdings.

Working capital fund

6. The Ninth Meeting of States Parties (SPLOS/L.14, paragraph 3) provided an amount of USD 50,000 to be credited to the Working Capital Fund and on an exceptional basis provided that savings, if any, of up to USD 200,000 be credited to the Working Capital Fund from the 2000 appropriation. In accordance with this decision a sum of USD 250,000 is provided for the Working Capital Fund.

Institutional arrangements

7. We recognized the need for a computerized accounting system which has since been installed and subsequent to our move to the new premises in November 2000 we are currently upgrading it to a network version. Subsequent to the move to the new premises we are now in the process of implementing electronic banking.

(Signed) Gritakumar E. Chitty
Registrar

Exhibit 5

International Tribunal for the Law of the Sea
Budgetary appropriations compared with expenditures and obligations for the period ended 31 December 2000

(United States dollars)

Objects of expenditure	2000 Appropriations	2000 Expenditures & Obligations	Savings/ Overrun
A. **RECURRENT EXPENDITURE**			
Remuneration of judges			
Annual allowances	1,295,107	1,279,717	15,390
Special allowances	311,717	310,081	1,636
Travel of judges to sessions	240,000	218,897	21,103
Judges pension scheme	16,666	18,669	(2,003)
Established posts	2,413,725	1,895,179	518,546
Common staff costs	806,184	622,340	183,844
General temporary assistance	120,000	42,323	77,677
Overtime	45,330	44,128	1,202
Representation allowance	7,600	7,600	-
Official travel	90,200	84,008	6,192
Communications	151,000	87,380	63,620
Supplies and materials	85,000	65,815	19,185
External printing and binding	50,600	48,640	1,960
Temporary assistance for meetings	129,091	117,537	11,554
Maintenance of premises	350,000	273,714	76,286
Rental & maintenance of equipment	240,000	115,971	124,029
Hospitality	7,100	4,603	2,497
Special services (external audit)	15,400	13,000	2,400
Library - procurement of books and publications	60,000	59,959	41
Start-up costs of library	60,000	58,565	1,435
Miscellaneous services (incl. bank charges)	25,000	16,842	8,158
Training	15,400	15,397	3
Security (contractual services)	137,135	23,426	113,709
B. **NON-RECURRENT EXPENDITURE**			
Hospitality (premises related)	8,400	7,679	721
Furniture and equipment			
1. Purchase of equipment	230,000	185,838	44,162
2. Purchase of special equipment	17,000	13,887	3,113
Contingency provisions	679,364	493,565	185,799
TOTAL	**7,607,019**	**6,124,760**	**1,482,259**
Provision for Working Capital Fund	50,000	50,000	-
GRAND TOTAL	**7,657,019**	**6,174,760**	**1,482,259**

Exhibit 6

AUDIT PROCEDURES AND RESULTS OF THE ADDITIONAL AUDIT SCOPE

As directed by the President of the International Tribunal for the Law of the Sea and set out in his letter dated January 7, 2000, which was confirmed by the Registrar's letter dated April 20, 2001, for the year 2000, we have audited the following aspects of operational procedures in addition to our audit of the financial statements as of 31 December 2000:

(a) whether expenditures incurred have been appropriately authorized by the party designated for that purpose in the Rules of the Tribunal and the Financial Regulations of the United Nations;
(b) whether staff and persons being paid by the Tribunal have been recruited or engaged in the manner provided for in the Rules of the Tribunal or the Financial Regulations of the United Nations;
(c) whether goods and services have been procured in accordance with the procedures provided for in the Financial Regulations of the United Nations; and
(d) whether goods and services which have been procured are necessary or not excessive, having regard to circumstances and the functions of the Tribunal.

In carrying out the audit of the above we performed the following audit work:

(a) Authorization of expenditures

We reviewed if the procedures for the authorization of expenditures are in line with the Financial Regulations of the United Nations. We examined on a sample basis if the procedures identified have been applied appropriately.

In our opinion the procedures for the authorization of expenditures were carried out in accordance with the Financial Regulations of the United Nations.

(b) Procedures for recruiting/engaging staff

We reviewed if the procedures for recruiting/engaging staff are in line with the Staff Rules of the International Tribunal for the Law of the Sea and the Financial Regulations of the United Nations for the following categories:

- Professional staff
- General service staff
- Special Service Agreements.

We selected samples of various categories and examined if proper procedures have been applied.

In our opinion the procedures for recruiting/engaging staff were carried out in accordance with the Rules of the International Tribunal for the Law of the Sea and the Financial Regulations and Staff Rules of the United Nations.

(c) Procedures for procurement of goods and services

We reviewed if the procedures are in line with the Financial Regulations of the United Nations (i.e. request for bids or proposals, fair analysis of proposals, written contracts, etc.). We examined samples of bids for procurement and reviewed procedures to ensure compliance with the Financial Regulations of the United Nations.

In our opinion the procedures for procurement of goods and services were carried out in accordance with the Financial Regulations of the United Nations including facility management and EDP equipment.

(d) Examined whether goods and services procured are necessary or excessive

We examined whether expenditures exceeded the budgetary appropriations or not. We reviewed if goods/equipment procured are listed in the inventory and are being used by the Tribunal. We also examined if the equipment acquired is excessive with regard to the circumstances and functions of the Tribunal.

We note the following observations:

1) The expenditures do not exceed the budgetary appropriations except for the budget line Judges pension scheme. We refer to our explanations under B. 'BUDGET' in our report.
2) The equipment acquired is duly listed in the inventory and is being used as required by the circumstances and the functions of the Tribunal. We make a note to the following:

   - Further to the note in our prior year's report that three servers acquired in 1999 and not previously being used, we note that one server is currently being used for internet access, the second one has been prepared to be used for the Finance System Network. The third server has been assigned for the Library Network which is not currently in use pending finalization of technical specification.

   - Out of the total inventory three laptops are not assigned to any judge / staff member as they have become obsolete and two more laptops are not being used as they are defective and have to be sent for repair.

Exhibit 7

[Translator's notes are in square brackets]

General Engagement Terms

for

Wirtschaftsprüfer and Wirtschaftsprüfungsgesellschaften

[German Public Auditors and Public Audit Firms]

as of July 1, 2000

This is an English translation of the German text, which is the sole authoritative version

1. Scope

(1) These engagement terms are applicable to contracts between Wirtschaftsprüfer [German Public Auditors] or Wirtschaftsprüfungsgesellschaften [German Public Audit Firms] (hereinafter collectively referred to as the "Wirtschaftsprüfer") and their clients for audits, consulting and other engagements to the extent that something else has not been expressly agreed to in writing or is not compulsory due to legal requirements.

(2) If, in an individual case, as an exception contractual relations have also been established between the Wirtschaftsprüfer and persons other than the client, the provisions of No. 9 below also apply to such third parties.

2. Scope and performance of the engagement

(1) Subject of the Wirtschaftsprüfer's engagement is the performance of agreed services – not a particular economic result. The engagement is performed in accordance with the Grundsätze ordnungsmäßiger Berufsausübung [Standards of Proper Professional Conduct]. The Wirtschaftsprüfer is entitled to use qualified persons to conduct the engagement.

(2) The application of foreign law requires – except for financial attestation engagements – an express written agreement.

(3) The engagement does not extend – to the extent it is not directed thereto – to an examination of the issue of whether the requirements of tax law or special regulations, such as, for example, laws on price controls, laws limiting competition and Bewirtschaftungsrecht [laws controlling certain aspects of specific business operations] were observed; the same applies to the determination as to whether subsidies, allowances or other benefits may be claimed. The performance of an engagement encompasses auditing procedures aimed at the detection of the defalcation of books and records and other irregularities only if during the conduct of audits grounds therefor arise or if this has been expressly agreed to in writing.

(4) If the legal position changes subsequent to the issuance of the final professional statement, the Wirtschaftsprüfer is not obliged to inform the client of changes or any consequences resulting therefrom.

Best copy available

3. The client's duty to inform

(1) The client must ensure that the Wirtschaftsprüfer - even without his special request - is provided, on a timely basis, with all supporting documents and records required for and is informed of all events and circumstances which may be significant to the performance of the engagement. This also applies to those supporting documents and records, events and circumstances which first become known during the Wirtschaftsprüfer's work.

(2) Upon the Wirtschaftsprüfer's request, the client must confirm in a written statement drafted by the Wirtschaftsprüfer that the supporting documents and records and the information and explanations provided are complete.

4. Ensuring independence

The client guarantees to refrain from everything which may endanger the independence of the Wirtschaftsprüfer's staff. This particularly applies to offers of employment and offers to undertake engagements on one's own account.

5. Reporting and verbal information

If the Wirtschaftsprüfer is required to present the results of his work in writing, only that written presentation is authoritative. For audit engagements the long-form report should be submitted in writing to the extent that nothing else has been agreed to. Verbal statements and information provided by the Wirtschaftsprüfer's staff beyond the engagement agreed to are never binding.

6. Protection of the Wirtschaftsprüfer's intellectual property

The client guarantees that expert opinions, organizational charts, drafts, sketches, schedules and calculations - especially quantity and cost computations - prepared by the Wirtschaftsprüfer within the scope of the engagement will be used only for his own purposes.

7. Transmission of the Wirtschaftsprüfer's professional statement

(1) The transmission of a Wirtschaftsprüfer's professional statements (long-form reports, expert opinions and the like) to a third party requires the Wirtschaftsprüfer's written consent to the extent that the permission to transmit to a certain third party does not result from the engagement terms.

The Wirtschaftsprüfer is liable (within the limits of No. 9) towards third parties only if the prerequisites of the first sentence are given.

(2) The use of the Wirtschaftsprüfer's professional statements for promotional purposes is not permitted; an infringement entitles the Wirtschaftsprüfer to immediately cancel all engagements not yet conducted for the client.

8. Correction of deficiencies

(1) The client is entitled to have the Wirtschaftsprüfer correct any deficiencies. The client may demand a reduction in fees or the cancellation of the contract only for the failure of a subsequent correction; if the engagement was awarded by a businessman within the scope of his commercial business, a government-owned legal person under public law or a special government-owned fund under public law, the client may demand the cancellation of the contract only if the services rendered are of no interest to him due to the failure of the subsequent correction. No. 9 applies to the extent that claims for damages exist beyond this.

(2) The client must assert his claim for the correction of deficiencies in writing without delay. Claims pursuant to the first sentence of the first paragraph expire six months after the Wirtschaftsprüfer has rendered the professional service.

(3) Obvious deficiencies, such as, for example, typing and arithmetical errors and formelle Mängel [deficiencies associated with technicalities] contained in a Wirtschaftsprüfer's professional statements (long-form report, expert opinion and the like) may be corrected – and also be applicable versus third parties – by the Wirtschaftsprüfer at any time. Errors which may call into question the conclusions contained in the Wirtschaftsprüfer's professional statements entitle the Wirtschaftsprüfer to withdraw – also versus third parties – such statements. In the cases noted the Wirtschaftsprüfer should first hear the client, if possible.

9. Liability

(1) The liability limitation of § ["Article"] 323 (2)["paragraph 2"] HGB ["Handelsgesetzbuch" German Commercial Code] applies to statutory audits required by law.

(2) Liability for negligence; An individual case of damages

If neither No. 1 is applicable nor a regulation exists in an individual case, pursuant to § 54a (1) no. 2 WPO ["Wirtschaftsprüferordnung" Law regulating the Profession of Wirtschaftsprüfer] the liability of the Wirtschaftsprüfer for claims for compensatory damages of any kind for an individual case of damages resulting from negligence is limited to DM 8 million; this also applies if liability to a person other than the client should be established. An individual case of damages also exists in relation to a uniform damage arising from a number of breaches of duty. The individual case of damages encompasses all consequences from a breach of duty without taking into account whether the damages occurred in one year or in a number of successive years. In this case multiple acts or omissions of acts based on a similar source of error or on a source of error of an equivalent nature are deemed to be a uniform breach of duty if the matters in question are legally or economically connected to one another. In this event the claim against the Wirtschaftsprüfer is limited to DM 10 million. The limitation to the fivefold of the minimum amount insured does not apply to compulsory audits required by law.

(3) Preclusive deadlines

A compensatory damages claim may only be lodged within a preclusive deadline of twelve months of the rightful claimant having become aware of the damage and of the event giving rise to the claim – at the very latest, however, within 5 years subsequent to the event giving rise to the claim. The claim expires if legal action is not taken within a six month deadline subsequent to the written refusal of acceptance of the indemnity and the client was informed of this consequence. The right to assert the bar of the preclusive deadline remains unaffected. Sentences 1 to 3 also apply to legally required audits with statutory liability limits.

10. Supplementary provisions for audit engagements

(1) A subsequent amendment or abridgement of the financial statements or management report audited by a Wirtschaftsprüfer and accompanied by an auditor's report requires the written consent of the Wirtschaftsprüfer even if these documents are not published. If the Wirtschaftsprüfer has not issued an auditor's report, a reference to the audit conducted by the Wirtschaftsprüfer in the management report or elsewhere specified for the the general public is permitted only with the Wirtschaftsprüfer's written consent and using the wording authorized by him.

(2) If the Wirtschaftsprüfer revokes the auditor's report, it may no longer be used. If the client has already made use of the auditor's report, he must announce its revocation upon the Wirtschaftsprufer's request.

(3) The client has a right to 5 copies of the long-form report. Additional copies will be charged for separately.

11. Supplementary provisions for assistance with tax matters

(1) When advising on an individual tax issue as well as when furnishing continuous tax advice, the Wirtschaftsprüfer is entitled to assume that the facts provided by the client – especially numerical disclosures – are correct and complete; this also applies to bookkeeping engagements. Nevertheless, he is obliged to inform the client of any errors he has discovered.

(2) The tax consulting engagement does not encompass procedures required to meet deadlines, unless the Wirtschaftsprüfer has explicitly accepted the engagement for this. In this event the client must provide the Wirtschaftsprüfer, on a timely basis, all supporting documents and records – especially tax assessments – material to meeting the deadlines, so that the Wirtschaftsprüfer has an appropriate time period available to work therewith.

(3) In the absence of other written agreements, continuous tax advice encompasses the following work during the contract period:

a) preparation of annual tax returns for income tax, corporation tax and business tax, as well as net worth tax returns on the basis of the annual financial statements and other schedules and evidence required for tax purposes to be submitted by the client

b) examination of tax assessments in relation to the taxes mentioned in (a)

c) negotiations with tax authorities in connection with the returns and assessments mentioned in (a) and (b)

d) participation in tax audits and evaluation of the results of tax audits with respect to the taxes mentioned in (a)

e) participation in Einspruchs- und Beschwerdeverfahren [appeals and complaint procedures] with respect to the taxes mentioned in (a).

In the afore-mentioned work the Wirtschaftsprüfer takes material published legal decisions and administrative interpretations into account.

(4) If the Wirtschaftsprüfer receives a fixed fee for continuous tax advice, in the absence of other written agreements the work mentioned under paragraph 3 (d) and (e) will be charged separately.

(5) Services with respect to special individual issues for income tax, corporate tax, business tax, valuation procedures for property and net worth taxation, and net worth tax as well as all issues in relation to sales tax, wages tax, other taxes and dues require a special engagement. This also applies to:

a) the treatment of nonrecurring tax matters, e. g. in the field of estate tax, capital transactions tax, real estate acquisition tax;

b) participation and representation in proceedings before tax and administrative courts and in criminal proceedings with respect to taxes, and

c) the granting of advice and work with respect to expert opinions in connection with conversions of legal form, mergers, capital increases and reductions, financial reorganizations, admission and retirement of partners or shareholders, sale of a business, liquidations and the like.

(6) To the extent that the annual sales tax return is accepted as additional work, this does not include the review of any special accounting prerequisities nor of the issue as to whether all potential legal sales tax reductions have been claimed. No guarantee is assumed for the completeness of the supporting documents and records to validate the deduction of the input tax credit.

12. Confidentiality towards third parties and data security

(1) Pursuant to the law the Wirtschaftsprüfer is obliged to treat all facts that he comes to know in connection with his work as confidential, irrespective of whether these concern the client himself or his business associations, unless the client releases him from this obligation.

(2) The Wirtschaftsprüfer may only release long-form reports, expert opinions and other written statements on the results of his work to third parties with the consent of his client.

(3) The Wirtschaftsprüfer is entitled – within the purposes stipulated by the client – to process personal data entrusted to him or allow them to be processed by third parties.

13. Default of acceptance and lack of cooperation on the part of the client

If the client defaults in accepting the services offered by the Wirtschaftsprüfer or if the client does not provide the assistance incumbent on him pursuant to No. 3 or otherwise, the Wirtschaftsprüfer is entitled to cancel the contract immediately. The Wirtchaftsprüfer's right to compensation for additional expenses as well as for damages caused by the default or the lack of assistance is not affected, even if the Wirtschaftsprüfer does not exercise his right to cancel.

14. Remuneration

(1) In addition to his claims for fees or remuneration, the Wirtschaftsprüfer is entitled to reimbursement of his outlays; sales tax will be billed separately. He may claim appropriate advances for remuneration and reimbursement of outlays and make the rendering of his services dependent upon the complete satisfaction of his claims. Multiple clients awarding engagements are jointly and severally liable.

(2) Any set off against the Wirtschaftsprüfer's claims for remuneration and reimbursement of outlays is permitted only for undisputed claims or claims determined to be legally valid.

15. Retention and return of supporting documentation and records

(1) The Wirtschaftsprüfer retains, for seven years, the supporting documents and records in connection with the completion of the engagement – that had been provided to him and that he has prepared himself – as well as the correspondence with respect to the engagement.

(2) After the settlement of his claims arising from the engagement, the Wirtschaftsprüfer, upon the request of the client, must return all supporting documents and records obtained from him or for him by reason of his work on the engagement. This does not, however, apply to correspondence exchanged between the Wirtschaftsprüfer and his client and to any documents of which the client already has the original or a copy. The Wirtschaftsprüfer may prepare and retain copies or photocopies of supporting documents and records which he returns to the client.

16. Applicable law

Only German law applies to the engagement, its conduct and any claims arising therefrom.

Special Conditions

for the increase of the maximum liability under the "General Terms of Engagement" dated July 1, 2000.

The limitations of DM 8,000,000 and DM 10,000,000 as provided for in Sec. 9 (2) of the "General Terms of Engagement" issued by the Institute of Auditors (Institut der Wirtschaftsprüfer) on July 1, 2000 are replaced by the amount of EUR 10,000,000.

Further, the following shall apply with respect to the increased liability amount:

If, in the engaging party's opinion, the foreseeable engagement risk will be considerably greater than EUR 10,000,000 and the engaging party therefore wishes to agree upon a higher liability limit, Arthur Andersen Wirtschaftsprüfungsgesellschaft Steuerberatungsgesellschaft mbH (Arthur Andersen) will, as the engaged party, offer the engaging party an increased liability limit in consideration of a reasonable increase in the agreed fees. These additional fees shall be calculated considering the premium that would have to be paid to insure the risk concerned in a separate insurance policy.

The above provisions are not applicable when a particular liability limit is stipulated by law for a professional service, in particular in connection with statutory audits.

If various causes of a sustained damage concur, Arthur Andersen shall be liable within the increased liability limit only to the extend that Arthur Andersen or its employees have contributed to damage in relation to causation by others; this applies especially in the case of a joint engagement with other members of the profession.